

### **REMARKS**

The Office Action mailed on April 3, 2007, considered and rejected claims 1-6. Claims 1, 4 and 5 were rejected under 35 U.S.C. § 102(b) as being unpatentable over *Weinberger* (U.S. Pat. No. 6,813,777). Claims 2, 3 and 6 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Weinberger* in view of Official Notice.

By this paper, claims 1 and 6 have been amended, while claims 7-20 have been added, and no claims have been cancelled.<sup>1</sup> Accordingly, following this paper, claims 1-20 are pending, of which, claims 1, 6, and 18 are the independent claims at issue.

As reflected above, the pending claims generally relate to methods for distributing in-flight entertainment devices (IFED) on-board a commercial aircraft. As reflected in claim 1, for instance, a method includes electronically swiping an identification card indicating an attendant and commercial airline flight. A financial card is electronically swiped to collect identification information for payment of a rental of a self-contained in-flight entertainment device. The entertainment device is distributed to a passenger, and an identification of the entertainment device is noted. An association between the identification of the entertainment device and information of the passenger is also recorded. Independent claims 6 and 18 are generally related to claim 1, but vary in some regards. For instance, claims 6 and 18 do not recite electronically swiping an identification card for attendant and commercial flight information. Claim 6 further recites collecting entertainment devices and charging customers for unreturned devices. Claim 18 recites aspects related to the entertainment devices, including portability and capabilities.

### **Rejections under 35 U.S.C. § 102**

As noted above, claims 1, 4 and 5 were rejected under 35 U.S.C. § 102(b) as being unpatentable over *Weinberger*. As is axiomatic, a claim is anticipated only if each and every element, as set forth in the claim, is found either expressly or inherently described, in a single reference which qualifies as prior art under 35 U.S.C. § 102. *Verdegaal Brothers v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). That single reference must show the identical invention *in as complete detail and in the same arrangement as that contained in the*

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<sup>1</sup> Support for the claim amendments may be found within the Applicant's application as originally filed. For example, amendments to at least claim 1 were made to correct typographical errors. All amendments and new claims are clearly supported at least by the disclosure in paragraphs 16-27 as numbered in the U.S. Patent Application Publication No. 2005/0055278, as well as in the originally filed claims and figures.

*claim. Net MoneyIn, Inc. v. Verisign*, 545 F.3d 1359, 1369-70 (Fed. Cir. 2008) (emphasis added); *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Independent claim 1, as recited above, is drawn to a method in which an identification card is *electronically swiped to indicate attendant and commercial airline flight*, as recited in combination with the other claim elements. A self-contained in-flight entertainment device is further *distributed* to a passenger while information related to the entertainment device is recorded to associate the device with the passenger. Claims 6 and 18 similarly include distributing entertainment devices to passengers.

*Weinberger* relates to a passenger entertainment system and method of processing transactions in the system. In the entertainment system, a network is provided for communicating entertainment data between a head end and multiple terminal devices. (Col. 4, ll. 15-53). For instance, head end equipment 200 may include a media server 211 that stores video. (Col. 9, ll. 12-19; Fig. 3). The media server 211 may provide simultaneous, independent streams of video can be coupled to a video modulator 212a which is in turn coupled to a video cassette player 227 that outputs three video programs under the control of a flight attendant. (Col. 9, ll. 14-18; Fig. 3). The entertainment system may be used to provide video content to a number of different locations. In particular, the head end equipment 200 includes an interface and connects to distribution equipment 210 so as to provide content to seat group equipment 220 (e.g., in-seat displays) and overhead equipment 230 (e.g., projectors and/or monitors attached to a bulkhead). (Col. 7, ll. 33-51; Col. 18, ll. 5-21).

The system in *Weinberger* may be used in connection with monetary transactions for services and/or products. (Col. 38, ll. 45-49). Flight attendants may log onto the system to process sales and review transactions that require flight attendant participation. (Col. 38, ll. 47-52). Flight attendants may thus be notified that they need to collect cash for transactions that may include orders of movies or games or orders of products such as food or duty-free items, or return cash for refunds. (Col. 38, ll. 52-64). Cash and credit card transactions may thus be initiated at the seat-level by the passenger, or at an attendant's console. (Col. 39, ll. 19-37). Information about the purchases (e.g., seat number, ordered product/service, quantity ordered, credit card information, total cost, flight attendant ID, etc.) may also be archived. (Col. 38, ln. 64 to Col. 39, ln. 2).

The operator terminal provides the flight attendant with the ability to control and input information for use by the media content system. For instance, the operator terminal can display information on the status of the video reproduction units and display messages when an error is detected. (Col. 43, ln. 65 to Col. 44, ln. 4). The operator terminal may also display additional information, such as flight information. Such flight information may include aircraft, registration number, flight number, departure airport, arrival airport, flight duration, and route type. (Col. 43, ll. 41-45). The displayed information may be obtained from an off-line database, retrieved from other equipment on-board (e.g., the passenger video information system), or manually entered by the flight attendant. (Col. 43, ll. 30-64).

Accordingly, *Weinberger* describes an aircraft media and information control and display system in which flight attendants are granted access to an operator terminal and passengers are able to view and potentially control various display units. Notably, while *Weinberger* does note that attendants may log onto the operator terminal and can manually input flight information, the reference is entirely silent on the manner for doing so. In particular, there is no express nor inherent disclosure that such input or logon information occurs through electronic swiping of an *identification* card as recited in the pending claims. Indeed, FIG. 4 of *Weinberger* illustrates an exemplary system in which a keyboard, microphone and mouse are provided as input devices, while including no card reading capabilities. In fact, it appears that the only card-reading capabilities implicit in *Weinberger* would include those for receiving credit card purchases of passengers of an aircraft, which credit card would clearly lack an identification of the attendant and/or a commercial airline flight as recited in the pending claims in combination with the other claim elements.

### **Rejections under 35 U.S.C. § 103(a)**

As also noted above, claims 2, 3 and 6 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Weinberger* in view of Official Notice. In analyzing a claim in the context of an obviousness inquiry under 35 U.S.C. § 103(a), the Office must support and clearly articulate the reason why the claimed invention would have been obvious at the time the invention was made. *KSR International Co. v. Teleflex Inc.*, 550 U.S. \_\_\_, \_\_\_, 82 USPQ2d 1385, 1396 (2007). The Office must further set forth and establish a *prima facie* case of obviousness which shows on the whole that obviousness is more likely than not. *See In re Oetiker*, 977 F.2d 1443,

24 USPQ2d 1443 (Fed. Cir. 1992); M.P.E.P. § 2143. Moreover, to establish a *prima facie* case of obviousness, the must evaluate the claimed invention “at the time the invention was made” so as to avoid impermissible hindsight. M.P.E.P. § 2141.01 *et seq.*

With regard to the rejected claims, it will be noted that the Office utilized Official Notice to supply teachings deemed absent from the *Weinberger* reference. In each such instance, the Office stated, with regard to the missing feature, that such feature is “common in the airline industry *today*.”

In other words, despite the clear language of 35 U.S.C. § 103(a) that requires obviousness be judged from the standpoint of when the claimed invention was made, the Office has taken Official Notice as to common airline practices “today.” The Office Action was mailed more than three years after the initial filing of the application. Accordingly, the Office is utilizing practices that allegedly occur well after the invention was made as a basis for why the invention made at least three years prior was obvious. Such argument is the epitome of hindsight as it doesn’t even attempt to reconstruct the state of the art at the time the invention was made. Accordingly, even if the Office’s assertions were regarded as true—namely the various “common” airline industry practices as of the mailing date of the Office Action<sup>2</sup>--the Office fails to present a *prima facie* case of obviousness as it doesn’t even attempt to indicate what motivation existed “at the time the invention was made” for modifying the cited *Weinberg* reference.

### Conclusion

In view of the foregoing, Applicant respectfully submits that the other rejections to the claims are now moot and do not, therefore, need to be addressed individually at this time. It will be appreciated, however, that this should not be construed as Applicant acquiescing to any of the purported teachings or assertions made in the last action regarding the cited art or the pending application, including any Official Notice. Instead, Applicant reserves the right to challenge any of the purported teachings or assertions made in the last action at any appropriate time in the future, should the need arise. Furthermore, to the extent that the Examiner has relied on any Official Notice, explicitly or implicitly, Applicant specifically requests that the Examiner

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<sup>2</sup> Applicant nonetheless reserves the right to challenge such purported teachings. By way of example and not limitation, the Office states that it is common to charge the same credit card used to purchase an airline ticket when a movie is not returned. Often, however, movie rentals occur outside of the airplane and through third party vendors in terminals. It is therefore not clear how the third party could charge the card used to purchase the airline as they are not necessarily linked to the airline.

provide references supporting the teachings officially noticed, as well as the required reason why one skilled in the art would have, at the time the invention was made, modified the cited art in the manner officially noticed.

Applicant further notes that the various claim amendments presented herein have been made without regard to the rejections supplied by the Office. In particular, claim 1 has been amended to correct an obvious typographical error. Claim 6 has been amended to broaden the claim and to clarify aspects already implicitly present in the claim, rather than for any reason related to patentability. Consequently, inasmuch as the rejections of record are clearly erroneous, Applicant respectfully submits that any subsequent action must be made non-final.

In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney at (801) 415-3000

Dated this 27th day of July, 2011.

Respectfully submitted,

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